

toileting and transferring. It was also determined that the Petitioner was independent with medication/administration, money management, and telephone use. It was determined that the only tasks the Petitioner needed assistance with was meal preparation, laundry and chores, and transportation. (Exhibit C)

3. On March 10, 2016, the Department of Health Services, Division of Long Term Care, Office of IRIS Management sent the Petitioner a notice, indicating that she was no longer functional eligible for the IRIS program. (Exhibit B)
4. On March 14, 2016, Milwaukee Enrollment Services sent the Petitioner a notice, advising her that she would no longer be enrolled in Community Waivers as of April 1, 2015, because of her level of care. (Exhibit 1)
5. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on March 23, 2016. (Exhibit 1)

DISCUSSION

The IRIS policy manual may be found online at:

<https://www.dhs.wisconsin.gov/publications/p0/p00708.pdf>

Section 2.0 of the IRIS policy manual states that to be eligible for the IRIS program an individual must either be at the Nursing Home (NH) level of care or require care at the level of an Intermediate Care Facility for Individuals with Developmental Delays (ICF-IDD).

There is no assertion by Petitioner that she suffers from a Developmental Delay. Thus, the issue is whether the Petitioner requires care at the Nursing Home level of care.

The standard for assessing the level of care for IRIS is taken from the regulation of the Family Care Program. It should be noted, however, that *Wis. Admin. Code, §DHS 10.33(2)*, uses the terms “comprehensive” and “intermediate” instead “nursing home” and “non-nursing home”. See also *Wis. Stat., §46.286*.

Comprehensive functional capacity is defined at *Wis. Admin. Code, §DHS 10.33(2)(c)*:

- (c) Comprehensive functional capacity level. A person is functionally eligible at the comprehensive level if the person requires ongoing care, assistance or supervision from another person, as is evidenced by any of the following findings from application of the functional screening:
 1. The person cannot safely or appropriately perform 3 or more activities of daily living.
 2. The person cannot safely or appropriately perform 2 or more ADLs and one or more instrumental activities of daily living.
 3. The person cannot safely or appropriately perform 5 or more IADLs.
 4. The person cannot safely or appropriately perform one or more ADL and 3 or more IADLs and has cognitive impairment.
 5. The person cannot safely or appropriately perform 4 or more IADLs and has cognitive impairment.
 6. The person has a complicating condition that limits the person's ability to independently meet his or her needs as evidenced by meeting both of the following conditions:
 - a. The person requires frequent medical or social intervention to safely maintain an acceptable health or developmental status; or requires frequent changes

in service due to intermittent or unpredictable changes in his or her condition; or requires a range of medical or social interventions due to a multiplicity of conditions.

- b. The person has a developmental disability that requires specialized services; or has impaired cognition exhibited by memory deficits or disorientation to person, place or time; or has impaired decision making ability exhibited by wandering, physical abuse of self or others, self neglect or resistance to needed care.

Intermediate functional capacity is defined at *Wis. Admin. Code, §DHS 10.33(2)(d)*:

- d) Intermediate functional capacity level. A person is functionally eligible at the intermediate level if the person is at risk of losing his or her independence or functional capacity unless he or she receives assistance from others, as is evidenced by a finding from application of the functional screening that the person needs assistance to safely or appropriately perform either of the following:
 - 1. One or more ADL.
 - 2. One or more of the following critical IADLs:
 - a. Management of medications and treatments.
 - b. Meal preparation and nutrition.
 - c. Money management.

The Long Term Care Functional Screen (LTCFS) is used to determine what assistance, if any, an individual needs with their activities of daily living (ADLs) or their instrumental activities of daily living (IADLs).

The March 8, 2016, LTCFS indicated that the Petitioner did not need assistance with any of her ADLs (bathing, dressing, eating, mobility, toileting and transferring). It found she needed assistance with three IADLs: meal preparation; laundry and chores; and transportation. Thus, under *Wis. Admin. Code, §DHS 10.33(2)(c)*, the Petitioner did not meet the criteria for a comprehensive/nursing home level of care.

The Petitioner argues that the information in the LTCFS was inaccurate. [REDACTED] testified that she completed the March 2016. [REDACTED] testified that the Petitioner testified that she observed the Petitioner ambulate using a rollator and that the Petitioner did not appear to have issues with stability or balance.

The Petitioner testified that she is able to bathe herself, using the side of the tub for assistance. The Petitioner testified that she is able to dress herself, though it can take a long time. The Petitioner testified that she is able to feed herself. The Petitioner testified that she is able to get around her home with her rollator, but needs to rest. The Petitioner also testified that she is able to go to the bathroom on her own, because she has a raised toilet seat and leans on the sink when she needs support. However, she is incontinent of stool and must use “Depends” at night. The Petitioner testified that she can transfer from her bed or a chair, using her walker.

Based upon the Petitioner’s testimony, it is found that the LTCFS correctly indicated she is independent with all of her ADLs.

It is undisputed that the Petitioner needs assistance with meal preparation, mainly because she needs help getting to the grocery shopping.

With regard to Medication Management, [REDACTED] testified that the Petitioner self-reported being able to understand what her medications were and when she needed to take them. The Petitioner testified that

she is able to set up her own pill box, but sometimes forgets a dose and need reminders. Petitioner's therapist has noted that the Petitioner has been experiencing memory deficits. (See Exhibit 3)

It is undisputed that the Petitioner is independent with money management.

It is undisputed that the Petitioner needs assistance with laundry and chores.

It is undisputed that the Petitioner is independent with regard to the use of her phone, but needs assistance with transportation.

Based upon the foregoing, it is found the Petitioner needs assistance with four IADLs: meal preparation; medication management; laundry and chores; and transportation.

In order to meet the criteria for a nursing home/comprehensive level of care, based upon IADLs, one must need assistance with four or more IADLs **and** have a cognitive impairment.

There is no evidence that the Petitioner has been formally diagnosed with a cognitive impairment. As such, she does not meet the nursing home/comprehensive level of care.

The Petitioner does meet criteria for the non-nursing home / intermediate level of care. As such, she might want to consider applying for enrollment in the Family Care, self-directed supports program, which is similar to the IRIS program.

CONCLUSIONS OF LAW

The Management Group (TMG) correctly determined the Petitioner's Level of Care.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

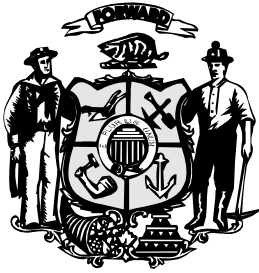
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES

IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 21st day of July, 2016.

\s _____
Mayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on July 21, 2016.

Bureau of Long-Term Support